

SIGNED.

Dated: September 23, 2011



James M. Marlar

James M. Marlar, Chief Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:) Chapter 7
TIMOTHY ANDREW SALAZAR and) No. 2:08-bk-11597-JMM
GENA ANNETTE SALAZAR,)
Debtors.) **MEMORANDUM DECISION**

In an interesting matter not previously confronted by this judge, a Chapter 7 Trustee asks the Debtors, whose Chapter 13 case was converted to a Chapter 7, to turn over estate monies received (but spent) by them post-petition, but pre-dating their conversion to Chapter 7 (ECF No. 75).

FACTS

1. The Debtors filed a voluntary Chapter 13 petition on September 3, 2008.
2. In their schedules, the Debtors did not list certain 2008 tax refunds due to them.
3. Eventually, while the Chapter 13 case was pending, the Debtors received a tax refund of \$4,084.94 (pro-rated portion of the 2008 tax year).
4. No Chapter 13 plan was ever confirmed.
5. On August 19, 2009, the Debtors elected to convert their case to one under Chapter 7.

6. After the Debtors received the tax refund, but before the conversion, they spent it in the normal course of living (ECF No. 88--Affidavit of Mr. Salazar).

7. The Trustee, in his reply, has alleged bad faith on the part of the Debtors. However, in the absence of evidence, the Trustee's supposition is not sufficient to rebut Mr. Salazar's explanations that, at the time of the conversion to Chapter 7, the tax refund at issue had been spent.

DISCUSSION

On the undisputed facts before the court, the court concludes that the Debtors prevail. 11 U.S.C. § 348(f)(1)(A). In re Laflamme, 397 B.R. 194 (Bankr. N.H. 2008); In re Bejarano, 302 B.R. 559 (Bankr. N.D. Ohio 2003); In re Grein, 435 B.R. 695 (Bankr. Colo. . 2010); In re Schick, 452 B.R. 884 (Bankr. W.D. N.Y. 2001).

RULING

A separate order will enter **OVERRULING** the Trustee's motion to compel turnover. FED. R. BANKR. P. 9021. Any aggrieved party shall have 14 days to appeal. FED. R. BANKR. P. 8002.

DATED AND SIGNED ABOVE.

To be NOTICED by the BNC ("Bankruptcy Noticing Center") to:

Attorney for Debtors
Jacob Sparks, Attorney for Trustee
Chapter 7 Trustee
Office of the U.S. Trustee